10 Utah 338, 37 Pac. 574. But the weight of authority holds that a principal may recover from his agent money paid to him for the principal on account of an illegal transaction, as the defense of the illegality of the transaction can be set up only by a party thereto, and when that contract is at an end, the agent, whose liability arises solely from having received the money for another's use, can have no right to retain it. *Clarke* v. *Brown,* 77 Ga. 606, 4 Am. St. Rep. 98; *Ingram* v. *Mitchell,* 30 Ga. 547. Another reason for allowing the principal to recover from the agent is that it is contrary to public policy and good morals to permit employees or agents to seize or retain the property of their principals, although it may be employed in an illegal business and under their control. No consideration of public policy can justify a lowering of the standards of moral honesty and integrity required of those that assume these relations. *Norton* v. *Blinn,* 39 Ohio St. 145.

CORPORATIONS — CORPORATE STOCK — PRIORITY OF RIGHTS BETWEEN UNRECORDED TRANSFEREE AND ATTACHMENT CREDITOR.—A, being indebted to B in the sum of $3,500, gave to B his promissory note, and as collateral security assigned to B certain certificates of stock in D Company. The transfer of said stock certificates to B was never recorded on the books of D Company. Subsequently C, a creditor of B, commenced an action against B, and levied on the above mentioned stock under a warrant of attachment. The Civil Code of South Dakota, § 423 and § 445 provides that "transfers of stock shall not be valid except between the parties thereto, until the same are entered upon the books of the corporation, * * * and such books shall be kept open for the inspection of any stockholder, member or creditor." *Held,* that notwithstanding such statutory requirements, the right of a transferee of corporate stock, though the transfer is not entered on the "stock book," is superior to that of a subsequent attaching creditor of the transferror, whether the creditor had notice of the transfer or not. *State Banking & Trust Co.* v. *Taylor* (1910), — S. D. —, 127 N. W. 590.

This question has been passed upon by the courts of the different states many times, and it is impossible to reconcile their decisions. That an unregistered assignment of corporate shares is not good as against a subsequent attaching creditor of the assignor is the doctrine upheld by the courts of Alabama, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, New Hampshire, Wisconsin and the United States Supreme Court. *Abels* v. *Planter's Ins. Co.,* 92 Ala. 382, 9 South. 423; *Naglee* v. *Pacific Wharf Co.,* 20 Cal. 530; *Conway* v. *John,* 14 Colo. 30, 23 Pac. 170; *Shipman* v. *Aetna Ins. Co.,* 29 Conn. 245; *People's Bank* v. *Gridley,* 91 Ill. 457; *Commercial Nat. Bank* v. *Farmer's Nat. Bank,* 82 Ia. 192, 47 N. W. 1080; *Skowhegan Bank* v. *Cutler,* 49 Me. 315; *Noble* v. *Turner,* 69 Md. 519, 16 Atl. 124; *Boston Music Hall Ass'n.* v. *Cory,* 129 Mass. 435; *Buttrick* v. *Nashua Ry. Co.,* 62 N. H. 413; *Johnson* v. *Laflin,* 103 U. S. 800. That such unrecorded transfers prevail over subsequent attaching creditors of the transferror is the uniform holding in Delaware, Minnesota, Louisiana, Mississippi, Missouri, New Jersey, New York, Rhode Island, Tennessee, Texas and the federal courts. *Allen* v. *Stewart,* 7 Del. Ch. 287, 44 Atl. 786; *Kern* v. *Day,*

45 La. Ann. 71, 12 South. 6; *Lund* v. *Wheaton Mill Co.*, 50 Minn. 36; *Clark* v. *German Security Bank*, 61 Miss. 611; *Wilson* v. *St. Louis Ry. Co.*, 108 Mo. 588, 18 South. 286; *Broadway Bank* v. *McElrath*, 13 N. J. Eq. 24; *De Comeau* v. *Guild Farm Oil Co.*, 3 Daly (N. Y.) 218; *Beckwith* v. *Burrough*, 13 R. I. 294; *Cornick* v. *Richards*, 3 Lea (Tenn.) 1; *James* v. *James*, 81 Tex. 373, 16 S. W. 1087; *Hazard* v. *Nat. Exch. Bank*, 26 Fed. 94. These courts proceed on the theory that an attaching creditor acquires no higher rights by levying on shares standing on the books of the corporation in the name of his debtor than his debtor had in them at the time of the levy. Statutes expressly requiring transfers of shares to be recorded on the books of the corporation, as in the principal case, are usually construed as intended for the protection of the corporation, in paying dividends and allowing the stock to be voted, and not as public recording acts for the protection of the general public. 2 COOK, CORP., Ed. 6, § 487; 2 THOMPSON, CORP., § 2411.

CRIMINAL PROCEDURE—SEALED VERDICT—SEPARATION OF JURY.—Defendant was charged with assault with intent to kill. After trial, the jury retired upon order of the court that they might separate after signing and sealing a verdict and placing it in the hands of the sheriff. This was done, the sheriff gave the sealed verdict to the clerk of the court and when the jury was called, they agreed orally to the original verdict as written. *Held,* that the separation of the jury, after the sealed verdict was rendered, did not vitiate the verdict given in open court and was not ground for a new trial. *People* v. *Duffek* (1910), — Mich. —, 128 N. W. 245.

Michigan has followed the rule of *Commonwealth* v. *Carrington,* 116 Mass. 37, which holds that the common law practice of refusing to allow the jury to separate until verdict rendered in open court does not apply in trials of felonies. A sealed verdict may be taken which when ratified after separation is the true verdict. In capital cases the common law rule is strictly followed in all states. Michigan by statute, has adopted it in murder cases. In trials of misdemeanors the jury may separate after a sealed verdict has been taken. See *Koch* v. *State,* 126 Wis. 470; *Pehlman* v. *State,* 115 Ind. 131; *Jackson* v. *State,* 45 Ga. 198; *Hechter* v. *State,* 94 Md. 429. In *Farley* v. *People,* 138 Ill. 97, 27 N. E. 927 in trial of a felony it was held that the common law rule applied in Illinois and that after the jury separated they had no power to render a verdict.

EMINENT DOMAIN — STREETS — POWER TO CONDEMN LAND REQUIRED FOR RAILROAD PURPOSES.—The city of Portland, Oregon, has the general power to appropriate and condemn private property for street purposes. In an action to enjoin the city from enforcing an order of the council, opening, widening and extending a certain street, it is *held* that under its authority the city had no power to condemn a part of a railroad right of way to construct a street longitudinally along the same, especially where there was no provision for joint use. *Portland Ry., Light & Power Co.* v. *City of Portland* (1910), — C. C. D. Ore. —, 181 Fed. 632.

A municipal corporation cannot exercise the power of eminent domain unless expressly authorized by the legislature. *Gasaway* v. *City of Seattle,*